

IN THE HIGH COURT OF TANZANIA
AT SUMBAWANGA
MISC. CRIMINAL APPLICATION NO. 23/2019

*(Original Economic case No. 4 of 2018 from Mpanda District Court at
Mpanda)*

DONASIANO MAHAYO LUKANKA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

W.R. MASHAURI

19/03/2020 & 30/03/2020

This is an application for leave to appeal to this court out of time.

It has been lodged in this court by the applicant Donasiano s/o Mahayo @ Lukanka under section 361(2) of the Criminal Procedure Act Cap. 20 RE 2002.

In his sworn affidavit of which is supported by an affidavit sworn by prison officer incharge of Kalilankulukulu prison, the applicant contented as well as he does during the hearing of his appeal that, the delay of lodging his appeal before this court in time was not that of his own making.

That, soon after he was convicted by the District Court of Mpanda at Mpanda for the offence of being found in unlawful possession of firearms C/S 20(1), (b) and (2) of the firearms control Act No. 2 of 2015 read

together with paragraph 31 of the first schedule to and Sections 57 (1) and 60(2) of the Economic and organized crime control Act Cap. 200 RE 2002 as amended by Section 16(b) and 13(b) of the written laws (Misc. Amendments) Act No. 3 of 2016 was sentenced to suffer 20 years imprisonment.

To serve his prison sentence he was admitted at Mpanda prison and that, soon after his admission he explained the admission officer on his intention to appeal to the High Court against both his conviction and sentence.

That, during that time there was a problem of stationary scarcity and the prison officer responsible for appeal matters was on leave and without him he could not be able to prepare his grounds of appeal. Hence the delay. He therefore prayed the court to allow his application for leave to appeal to this court out of time.

On his part, Mr. Mwashubira learned Senior State Attorney for the Republic/Respondent did support the application on the reasons that, the application has been correctly brought in this court under section 361(2) of the Criminal Procedure Act Cap. 20 RE. 2002 and the delay was not inordinate.

That, being layman, the applicant could not be able to process his appeal in absence of the prison officer responsible for Appeal matters. He therefore prayed this court allow the appellant's application.

For me, I also in all fours agree with both the applicant and the learned State Attorney for the respondent that, the applicant's delay of filing his appeal in this court is not that of his own making. Both the scarcity of

stationary at Mpanda prison where he was admitted to serve his jail sentence and the absence of the prison officer responsible for appeal matters were all beyond control of the applicant. These are sufficient causes for the delay.

His application is granted. He is ordered by this court to lodge his appeal in this court within 21 days from the date of this order.

It is so ordered.



W.R. Mashauri

Judge

30/03/2020

Date - 30/03/2020

Coram - Hon. W. Mutaki - DR

Applicant - Present

Respondent - Absent

B/C - Namtamwa

Court: - Ruling delivered in the presence of the Applicant Mr. Donasiano Mahayo Lukanka.



W.M. Mutaki
Deputy Register
30/03/2020